

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

ROBERT GARDNER,

Plaintiff,

-v-

LOU ANNA SIMON AND THE  
MICHIGAN STATE UNIVERSITY  
BOARD OF TRUSTEES,

Defendants.

Case No. 1:12-cv-1018

Grand Rapids, Michigan  
September 19, 2013  
9:57 a.m.

HON. PAUL L. MALONEY

MOTION HEARING  
BEFORE THE HONORABLE JOSEPH G. SCOVILLE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

In Pro Per:

Mr. Robert Gardner  
1625 Grovenburg Rd.  
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(517) 694-1760

For the Defendant:

Mr. Michael J. Kiley  
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For Movant BIA:

Mr. Michael Shiparski  
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(616) 456-2404

1 Grand Rapids, Michigan

2 Thursday, September 19, 2013 - 9:57 a.m.

3 THE COURT: Case number 1:12-cv-1018, Robert Gardner  
4 versus Michigan State University Board of Trustees, et al.

5 This is the time set for a hearing on several  
6 discovery motions filed by plaintiff, as well as a motion for  
7 relief from a previous order of the Court filed by the Bureau of  
8 Indian Affairs, and a motion to extend the time for discovery and  
9 inferentially all the dates and deadlines in the case.

10 Appearing on behalf of plaintiff, he appears in pro  
11 per, Mr. Gardner.

12 On behalf of all defendants, Attorney Michael Kiley.  
13 And on behalf of the BIA, Mr. Shiparski.

14 Mr. Shiparski, I'd like to take up your matter first  
15 since you're not a party to all this other stuff. I've got a  
16 number of questions about the position that you've taken on  
17 behalf of the BIA.

18 First of all, what makes you think that Rule 60(b)  
19 has anything to do with this?

20 MR. SHIPARSKI: Your Honor, we came in a little late  
21 in the ball game and I thought it was necessary to seek relief  
22 from your order to respond to that subpoena, in effect, an order  
23 to show cause, and that's the reason I thought that Rule 60(b)  
24 would provide us some relief from that order to try to set this  
25 matter on the right track.

1           THE COURT: Well, I think you took on a burden that  
2 you didn't need to. This is not a file on an appealable order.  
3 Rule 60(b) only deals with judgments, and lawyers like to -- some  
4 courts like to throw Rule 60(b) around, but the fact is that as  
5 long as an order is not final and appealable it's subject to  
6 revision at any time so I'm not going to pay any attention to  
7 Rule 60(b).

8           But I've got some questions about your position here.  
9 The first has to do with what the BIA did in response to the  
10 proceedings in this court.

11           Apparently when they got the subpoena, when BIA got  
12 the subpoena, Mr. Blake sent a letter with a copy to this court  
13 dated April 8th invoking Twohey, right?

14           MR. SHIPARSKI: Correct, your Honor.

15           THE COURT: Okay. Then we had a hearing -- no, then  
16 there was a motion filed by the plaintiff and I issued an order  
17 saying that the plaintiff had to serve his motion to compel  
18 compliance on the non-parties who were subpoenaed, Victor  
19 Christianson and Troy Clay, and it's Christianson who relates to  
20 this case, right?

21           MR. SHIPARSKI: Yes, your Honor.

22           THE COURT: So was that done?

23           MR. SHIPARSKI: As I see from the record, your Honor,  
24 there was notice and proof of service to Victor Christianson and  
25 to a Robert Hall who is also an attorney at the Office of

1 Solicitor for the Department of Interior.

2           Where there was a disconnect was the response to the  
3 subpoena that your Honor first mentioned from Mr. Blake tried to  
4 maybe not artfully enough get the matter on the right track by  
5 informing Mr. Gardner that the correct individual now to contact  
6 would be not Mr. Christianson but a Mr. Stevens, and gave him the  
7 address.

8           And unfortunately there's a disconnect because Mr.  
9 Gardner kept reaching out to Mr. Hall and Mr. Christianson and to  
10 some extent an Ann Jennings. Christianson and Jennings both  
11 being at the Bureau of Indian Affairs.

12           And as those matters were sent their way it was not  
13 apologizing for the Bureau of Indian Affairs and Office of the  
14 Solicitor on the wrong radar screen so Mr. Blake didn't pick that  
15 up. And the next thing that happens is, yes, it was sent there  
16 but it wasn't responded because it was off in the wrong  
17 direction.

18           And it is unfortunately after the Court issues the  
19 order that it finally gets on the right track and winds up in our  
20 office here in Grand Rapids to try to address -- first trying to  
21 address Mr. Gardner's concern and, second, filing the motion for  
22 relief and to quash the subpoena, all with the intent to try to  
23 get this on the right track of a Twohey request.

24           THE COURT: I understand that but, you know, Mr.  
25 Blake wasn't really acting in a very lawyer-like fashion when he

1 just sends a letter to the Court.

2 If he'd filed an appearance his name would have  
3 gotten on the docket sheet and he would have gotten notice of  
4 this. But to just dump a letter in the record requires the Court  
5 to, you know, to read the letter and to figure out what Mr. Blake  
6 is up to and, frankly, that didn't happen because it wasn't clear  
7 that anybody was appearing on behalf of BIA.

8 This is the sort of thing pro se litigants do. They  
9 send letters to the Court and hope something happens. So if the  
10 BIA didn't have proper notice of this it wasn't the Court's fault  
11 and it wasn't Mr. Gardner's fault. Okay.

12 So there was actual notice although a bureaucratic  
13 snafu.

14 Now, Twohey, at it relates to federal court  
15 subpoenas. Isn't there a quite substantial body of law coming  
16 out of the DC circuit and then filtering down through the trial  
17 courts saying that there is no sovereign immunity against federal  
18 subpoenas; that there is sovereign immunity with regard to state  
19 court subpoenas but not federal subpoenas so that we have a whole  
20 different analysis when it comes to federal subpoenas.

21 MR. SHIPARSKI: I don't disagree, your Honor, but I  
22 would rely on the fact that the regulations were in place and I  
23 think Twohey and the housekeeping I guess line of cases and  
24 regulations that follow that were set up to try to give the  
25 government an orderly way to respond to these kind of things with

1 efficiency and resources and all that under consideration.

2 THE COURT: You're really not addressing my point and  
3 that is that there are a number of courts that disagree with what  
4 you just said when it comes to federal subpoenas.

5 MR. SHIPARSKI: I still think it's for a non-party,  
6 your Honor. I mean, when the BIA, a non-party in the action, is  
7 subpoenaed as a non-party, third-party, no interest in the law  
8 suit, I think Twohey would still apply.

9 THE COURT: Isn't that always the case when there's a  
10 subpoena issued?

11 MR. SHIPARSKI: Yes, your Honor.

12 THE COURT: And have you thought about In Re Banker's  
13 Trust, which is now almost 20 years old, where the Sixth Circuit  
14 said that Twohey regulations issued under the housekeeping  
15 statute go beyond the scope of their authority when they try to  
16 override the Federal Rules of Civil Procedure and divest a Court  
17 of jurisdiction over discovery. Are you aware of --

18 MR. SHIPARSKI: I apologize, no, your Honor.

19 THE COURT: Well, your brief cites all of the cases  
20 that support you but there are a whole bunch of cases where --  
21 especially the lower federal courts and the eastern district --  
22 are getting sort of sick of this hiding behind Twohey to get  
23 around federal subpoenas.

24 Judge Borman ruled about 18 months ago that when it's  
25 a federal subpoena there's no sovereign immunity and that

1 basically Twohey doesn't apply, and that the rules of privilege  
2 and all that can be vindicated in response to a subpoena in an  
3 orderly fashion and that the housekeeping regulations of these  
4 various agencies just are not going to impede federal discovery.  
5 Are you aware of those cases?

6 MR. SHIPARSKI: No, your Honor, I'm not. This is,  
7 frankly, my exposure to Twohey has always been in the state court  
8 and --

9 THE COURT: Right.

10 MR. SHIPARSKI: -- and as far as federal court  
11 subpoenas go maybe somewhere along the line that that was an  
12 issue that I had dealt with but it was dealt with across the  
13 table earlier than the circumstances that I was met with here.

14 Frankly, looking for case law to help me out from  
15 underneath the Court's order and given the circumstances, that's  
16 what generated and drove the brief I filed and the position I  
17 took after attempting to some extent to set the matter straight  
18 and to get the proper request before the BIA so they could look  
19 if they had anything responsive to the subpoena.

20 THE COURT: Well, let's talk about that. Do you we  
21 know whether they have anything responsive?

22 MR. SHIPARSKI: I don't know, your Honor. I know  
23 that there was a FOIA request to the BIA in November of 2011 or  
24 to Washington; that Mr. Gardner received a response that they had  
25 nothing responsive to his inquiry focusing on Ann Jennings at the

1 BIA and policies and procedures I think with respect to how  
2 programs that the BIA may have given funding for were run.

3 Then another FOIA request was sent to the Michigan  
4 agency of the BIA in August of 2012 where I understand Mr.  
5 Gardner received some documents responsive to this September 2011  
6 award from the BIA to the Pokagon Band for I think the research  
7 project that is swirling around in the case-in-chief.

8 THE COURT: Mm-hmm.

9 MR. SHIPARSKI: I have them looking for materials  
10 that relate to that at the BIA in Washington, DC, and they have,  
11 I know, been reaching out to the Michigan agency of the BIA with  
12 respect to the subpoena drawing from the subpoena that underlies  
13 this matter that I have before the Court right now.

14 So, I don't know, they've been responsive in a  
15 certain respect to this FOIA request that some documents were  
16 turned over. I don't know if there are additional ones.

17 The program manager, I learned the end of last week,  
18 the program manager that was associated with this September 2011  
19 award is now retired so that was an issue that they were dealing  
20 with to try to regenerate where and how to look for materials  
21 responsive to that award.

22 THE COURT: Okay. Well, I'm going to write a little  
23 opinion on this because I'm sure the government won't take this  
24 sitting down.

25 But as far as I can tell -- and the Sixth Circuit has



1 not ruled on this -- but as far as I can tell the sort of weight  
2 of modern authority is, number one, there's no sovereign immunity  
3 issue. The federal government has waived sovereign immunity in  
4 federal court so there's no immunity from a federal subpoena.

5 And as you indicate a lot of this law came up from  
6 state courts, but federal court is different.

7 And, second, I'll just cite for today's purposes a  
8 recent case from Judge Borman, In Re Packaged Ice Anti-Trust  
9 Litigation, 2011 Westlaw 1790189, May 10th, 2011, so it's a  
10 couple years old now, in which he analyzes better than I could  
11 the whole issue, and says that the weight of modern authority  
12 from this century in the federal circuits is that a challenge to  
13 an agency's refusal to comply with a Rule 45 subpoena should  
14 proceed and be treated not as an APA action but as a Rule 45  
15 motion to compel, and that the standards set up by the Rules of  
16 Civil Procedure are what apply to a summons and not Twohey when  
17 it comes to federal court.

18 And Judge Borman relied on the In Re Banker's Trust  
19 Company case, 1995 decision of Court of Appeals, 621 Federal 3rd  
20 465, which is not directly on point, but there the Court of  
21 Appeals had occasion to discuss this whole issue of Twohey  
22 regulations issued under the housekeeping statute, and the Court  
23 of Appeals squarely held that the Twohey regulations step beyond  
24 the statutory delegation when they purport to override the  
25 Federal Rules of Civil Procedure or divest the federal courts of

1 jurisdiction over discovery.

2           So Twohey isn't going to do it in this case. I'm  
3 going to, as I said, I'm going to issue a short opinion making  
4 that clear in case anybody wants to continue this debate before  
5 higher authorities.

6           So I'm going to enter a final order enforcing the  
7 subpoena, not holding anybody in contempt. Obviously there are  
8 serious issues here. But it seems to me that the agency has been  
9 on notice for a long time that Mr. Gardner wanted these records  
10 and they essentially ignored the subpoena and they ignored the  
11 hearing that was set by the Court.

12           I tried to make it clear to Mr. Gardner that he had  
13 to notify the BIA about this and he did, he followed the Court's  
14 order. Apparently the BIA fumbled the ball on their end. Mr.  
15 Blake could have avoided that by filing an appearance and an  
16 objection to the subpoena rather than a letter.

17           So the subpoena was properly served. The motion was  
18 filed and properly notice and served on the deponent. The person  
19 was subpoenaed. It was ignored. Rule 60(b) doesn't apply. I'm  
20 looking at this thing de novo but in the context of a party that  
21 has ignored a motion to compel, and the only objection raised is  
22 the regulation, the Twohey regulation and I find it doesn't  
23 apply.

24           And so I'll give the subpoenaed party 14 days to  
25 comply and to produce the responsive records. There's only one

1 or two categories as I recall.

2 But these agencies ought to start paying attention to  
3 some modern authority that indicates that when you're in federal  
4 court it's a completely different analysis from state court.  
5 Okay.

6 MR. SHIPARSKI: Yes, your Honor. Thank you.

7 THE COURT: Thank you. So that motion is granted.

8 An order enforcing the subpoena giving 14 days to comply will be  
9 entered.

10 MR. SHIPARSKI: Thank you.

11 THE COURT: Okay. Thank you.

12 Now, Mr. Gardner, I don't think it's an exaggeration  
13 to say that you have abused the Court with your multiple filings  
14 here.

15 You filed an original motion to compel having to do  
16 with some document request that you served, and then Mr. Kiley  
17 responded, and you filed a supplemental motion to compel which as  
18 far as I can tell has to do with the same subject matter. Am I  
19 right about that, the same requests? You just wanted to weigh in  
20 again with more arguments.

21 THE PLAINTIFF: I wanted to make the point that he  
22 responded but the response is not complete.

23 THE COURT: Yeah.

24 THE PLAINTIFF: I didn't know how to address that.

25 THE COURT: Okay. So, number one, you filed a reply

1 brief without -- reply briefs under our rules, if you're going to  
2 litigate in our court you have to read the rules. There are no  
3 reply briefs allowed without leave of court.

4           Instead of filing a reply brief you file this  
5 supplemental motion and re-argue the whole thing again and force  
6 Mr. Kiley to file another response on the same basic issue and  
7 that is you want your PhD files and they say there aren't any,  
8 and that is an appropriate answer. If they say there aren't any  
9 then that's it. I can't make a party produce documents out of  
10 thin air.

11           Now, they did produce several interesting documents  
12 including a memo from some professor or another who very  
13 interestingly detailed your history at MSU from 1990 to 1998 when  
14 you were in the PhD program, and it says they spent \$120,000 on  
15 all of your projects in support of that, and then you withdrew in  
16 1998 or they cut you off or whatever happened in 1998. It's  
17 really not germane.

18           And then you applied again and this professor -- Mr.  
19 Kiley, can you help me with which one of your exhibits this is?  
20 You know what I'm talking about?

21           MR. KILEY: I'm not certain. What motion are we  
22 talking about, your Honor?

23           THE COURT: Yeah, that's a good question -- since you  
24 have filed duplicative motions that really argue the same thing  
25 over and over and over again.

1 Well, first of all, the point I'm making -- and I got  
2 a little side-tracked -- the point I'm making is that the  
3 defendants' responses have attached documents responsive to your  
4 requests. Apparently in 2009 you did, in fact, apply. We have  
5 reviewed -- March 25, 2009, "We've reviewed your application for  
6 admission to Department of Agricultural Economics. I regret to  
7 inform you we cannot recommend approval."

8 So they gave you the documents that you asked for.  
9 You asked for documents having to do with your recent PhD  
10 efforts. Mr. Kiley went back to 2009 and found some documents  
11 indicating that you did, in fact, apply, and that they said no,  
12 and there are other documents. There's your application and  
13 there's some other stuff here.

14 THE PLAINTIFF: I also asked for documents that other  
15 people applied for comparative and I didn't get those and that  
16 was --

17 THE COURT: What does that have to do with this case?

18 THE PLAINTIFF: I need to show a pattern of  
19 discrimination and that I was more qualified and that I have to  
20 show that that decision was not the department's decision and  
21 that it was based on discrimination and that there's a pattern.

22 THE COURT: What's that have to do with this case?

23 THE PLAINTIFF: A proof of discrimination is a  
24 history of discrimination and I want to be able to prove that  
25 this current discrimination evolved -- is a part of the history.

1 THE COURT: So you want everybody else who applied --

2 THE PLAINTIFF: Which is not very many.

3 THE COURT: -- in support of which of your theories  
4 in this case?

5 THE PLAINTIFF: That I'm being retaliated and  
6 prevented from completing my PhD.

7 THE COURT: Retaliation has nothing to do with  
8 comparables. Retaliation has to do with --

9 THE PLAINTIFF: Timing.

10 THE COURT: -- number one, did you make a protected  
11 statement. And, number two, did they take an adverse action.  
12 Number three, is there the requisite causal connection between  
13 the adverse action and the protected statement. That has nothing  
14 to do with anybody else.

15 As far as I can tell you have a retaliation under  
16 Title VII claim here but there is no claim that you were treated  
17 in a disparate way on account of race, religion, gender, any of  
18 those other things.

19 So comparables are not within the scope of relevancy  
20 or discovery in this case.

21 THE PLAINTIFF: And that's what I was asking for with  
22 my supplemental. I didn't know how to do it appropriately.

23 THE COURT: Say that again?

24 THE PLAINTIFF: That's what I was hoping to get was  
25 the comparables with that. He had given me everything but the

1 comparables and I didn't know how to address the fact that he  
2 hadn't provided the comparables.

3 THE COURT: You don't get comparables because --

4 THE PLAINTIFF: Right, but, I mean, that's what I was  
5 asking.

6 THE COURT: -- it's irrelevant.

7 THE PLAINTIFF: Okay.

8 THE COURT: So this whole big motion to compel and  
9 supplemental motion to compel, Dockets 82 and 93, all had to do  
10 with that and there's just no cause in this case to get into  
11 disparate treatment or comparables because this is a retaliation  
12 case.

13 THE PLAINTIFF: Okay.

14 THE COURT: Then you've got with regard to defendants  
15 the second motion to compel, Docket No. 103, and again all I can  
16 tell is that you asked them for something and you're dissatisfied  
17 with their answer.

18 THE PLAINTIFF: Yes.

19 THE COURT: But you didn't attach their answer so  
20 it's a little hard for me by your papers to see exactly what you  
21 asked for and what they -- I know what you asked for but you  
22 didn't tell me what they gave you and what they didn't give you.

23 And again apparently they did give you something in  
24 response to your third request.

25 THE PLAINTIFF: Pokagon had -- there was some

1 financial interactions between the Pokagon Band and Michigan  
2 State University that I allege as proof that money had been taken  
3 from me that was promised to me and reallocated to MSU.

4 They referred to it in Exhibit 3 that the money  
5 existed but I was trying to find the amount and all that to  
6 substantiate that particular claim, and that's the basis of this  
7 particular motion.

8 THE COURT: I agree with defense counsel that your  
9 requests are convoluted to say the least.

10 But, Mr. Kiley, turning to you, what have you  
11 produced concerning this grant from the tribe or to the tribe?

12 MR. KILEY: I conferred with three people, two of  
13 whom Mr. Gardner had identified who I thought may know something,  
14 and asked them to provide me everything relating in any way to  
15 any interaction, any documentation, anything, and produced seven  
16 sets of material including 17 pages of e-mails, a plan of work.

17 I produced everything that I could find that referred  
18 to MSU and the Pokagon Band.

19 THE PLAINTIFF: Your Honor, there's an e-mail right  
20 here that indicates that there was a money transfer occurring and  
21 I did not receive any documents about that money transfer, and I  
22 know Michigan State as an entity like that keeps very good track  
23 of how money flows through their institution.

24 THE COURT: You want an audit where the money went?

25 THE PLAINTIFF: I want to know where the, yeah, who



1 get -- the Pokagon's gave the money to Michigan State University.  
2 I'd like to know how much and where.

3 THE COURT: What are you holding up there for my  
4 edification?

5 THE PLAINTIFF: It's Exhibit 3. May I present it?  
6 Exhibit 3 to this particular one.

7 It's an e-mail from Henry Gordon, the Director of  
8 North American Institute of MSU, to some people from Pokagon Band  
9 and copied to a couple of the employees at MSU that took over the  
10 project, and it says, "Thanks for the update. The Native  
11 American Institute has sent invoices to the Pokagon. You can  
12 bill the Native American Institute for the project."

13 Money's being transferred between the Pokagon and MSU  
14 and I'd like to be able to show that that was money that that was  
15 promised to me.

16 THE COURT: And what do you think -- how do you think  
17 the invoices are going to show that?

18 THE PLAINTIFF: The paper trail. They're going to  
19 have -- MSU will have a specific number assigned to a specific  
20 project and once I assign the project the Pokagons -- I have a  
21 subpoena to them -- I'm asking them for what happened to the  
22 money that the BIA gave them, the Bureau of Indian Affairs, and  
23 I'm trying to show that that money from the Bureau of Indian  
24 Affairs that was delegated to me went to Michigan State  
25 University in order to enhance my tortious interference claim,

1 retaliation claim.

2 THE COURT: They're not disputing that the money went  
3 to them. It's your job to prove that it was promised to you.

4 THE PLAINTIFF: Right.

5 THE COURT: Are they saying, yeah, we paid Gardner?

6 THE PLAINTIFF: Is this the money that was promised  
7 to me? That's what this paper trail will show.

8 THE COURT: How in the world will it show that?

9 THE PLAINTIFF: Because it has invoices with account  
10 numbers. It'll show what the Pokagons were being billed for if  
11 it was due my particular project, and from there I can go to the  
12 Pokagons and say, hey, where did that money come from, and if it  
13 came from the Bureau of Indian Affairs I can say, ah-ha, your  
14 Honor, that was money promised to me that MSU took from me.

15 THE COURT: How was the money promised to you?

16 THE PLAINTIFF: I had a contract. We had a contract  
17 with the Pokagons and the Bureau of Indian Affairs. I worked  
18 with them to get the money to line up a tribe, and they gave the  
19 money to the tribe to hire me and Jim Oehmke, my major professor,  
20 and to conduct research for them, and then all of a sudden out of  
21 the blue Pokagon said they were going to work with someone else  
22 at Michigan State University.

23 We have a grant, a signed grant. We have promises  
24 from the Pokagon Tribe to the Bureau of Indian Affairs that this  
25 was a project that they would endorse and support heartily and

1 that's what I've got to show you, your Honor. That's what I have  
2 to get that information to prove that to you, your Honor.

3 THE COURT: No, you don't.

4 THE PLAINTIFF: All right.

5 THE COURT: The information that you're seeking is in  
6 pursuit of an undisputed fact.

7 Mr. Kiley, does anybody in this case claim that Mr.  
8 Gardner got any of this money?

9 MR. KILEY: No.

10 THE COURT: The question is whether he was entitled  
11 to any of it.

12 MR. KILEY: Correct, your Honor.

13 THE COURT: All right.

14 So it's undisputed that you got none of this.

15 THE PLAINTIFF: Did MSU get this money from the  
16 Pokagon's? Is this my money that the Pokagon's gave you? That's  
17 the question I'm trying to find.

18 THE COURT: Did they get the money? Is this my  
19 money? Those are two very different --

20 THE PLAINTIFF: All right, well, it's --

21 THE COURT: Two very different things.

22 THE PLAINTIFF: But do you see what I'm driving at,  
23 your Honor?

24 THE COURT: No, I don't. No, I don't, not at all.

25 I see what you're contending but what I don't see is

1 how this particular discovery moves the ball. That's really the  
2 question under Rule 26. Does it tend to make the disputed issue  
3 more or less likely? And the fact that there was money going  
4 back and forth from these people is undisputed. The question is  
5 did you -- was that your money, as you put it.

6 THE PLAINTIFF: Yes. Okay.

7 THE COURT: This doesn't tend to show that that's  
8 your money; it just tends to show that there was money going back  
9 and forth.

10 THE PLAINTIFF: Well, MSU does have that information  
11 about where the -- when they got -- they billed Pokagons they had  
12 that information. That's the documents I'm not getting.

13 THE COURT: The fact that they have it doesn't mean  
14 that it's discoverable in this case.

15 THE PLAINTIFF: Okay. And that's what I'm trying to  
16 argue to your Honor is can I get that information to show you  
17 that that money was the money that was earmarked for the project  
18 that me and Dr. Oehmke were working on.

19 THE COURT: It doesn't --

20 THE PLAINTIFF: Okay.

21 THE COURT: It doesn't tend to show that. And that  
22 leads me to two other things and that is, first of all, this  
23 subpoena to the Pokagon Tribe.

24 Mr. Gardner, you did not give me the last  
25 communication from their counsel to you, and Mr. Kiley had to

1 give that to me.

2 THE PLAINTIFF: That's because it occurred after I  
3 had filed and I have that.

4 THE COURT: Oh, well, you certainly know how to file  
5 things afterwards when you want to, now, don't you? You  
6 certainly know how to file serial documents in support of the  
7 same issue when you want to.

8 THE PLAINTIFF: Was I supposed to send that letter to  
9 you then? I didn't know. I mean, there was no motion to be  
10 accompanied with it.

11 THE COURT: Isn't it quite misleading for you to say  
12 that, as you did, they didn't respond, they said nothing, I never  
13 heard from them, they ignored your order. That's what you said.

14 THE PLAINTIFF: And when I filed this they had not  
15 responded; they had ignored my order. I got this e-mail that  
16 night at 5:30 -- and I actually pulled it and I was going to give  
17 it to you -- at 5:30 and it was after this particular subpoena,  
18 this paperwork was filed to you.

19 I filed the paper, came home, and then that night  
20 about seven or eight, whenever I checked my e-mail, I saw that  
21 they had issued me a response.

22 THE COURT: Making what you said misleading.

23 THE PLAINTIFF: Unintentionally misleading.

24 THE COURT: Okay.

25 THE PLAINTIFF: As of that day it was not misleading.

1 They had not responded at all. So I filed the motion and that  
2 night maybe they saw it through PACER or something that I filed  
3 that and they sent me an e-mail.

4 THE COURT: And you didn't think it necessary to  
5 bring that to the Court's attention?

6 THE PLAINTIFF: No, I didn't. I thought there was  
7 another -- it didn't say anything and they never gave me any  
8 documents. If they give me documents, yes, then I have to. If  
9 they don't give me documents, I got promises all the time.

10 THE COURT: Well --

11 THE PLAINTIFF: I don't know how to file a  
12 supplemental motion with this. I don't know how to --

13 THE COURT: You do know how to file a supplemental --

14 THE PLAINTIFF: I do.

15 THE COURT: -- motion, sir, you do it all the time.

16 THE PLAINTIFF: Right.

17 THE COURT: On the basis of the e-mail which says  
18 they've given you everything that they have responsive the motion  
19 is denied, and also because you can play games with Michigan  
20 State but you can't play games with courts of law, and that's  
21 what you've done on this. You fail to bring all the facts to the  
22 Court's attention, and that's sanctionable.

23 Now, you have filed three merit-less motions -- four  
24 -- and you bring Mr. Kiley in here constantly to put up with this  
25 stuff.

1 I am sanctioning you in the amount of \$150, which is  
2 a pittance, to reimburse Michigan State for some of the  
3 unnecessary time that they have put in responding to  
4 undecipherable discovery requests and then seriatim motions that  
5 really argue the same thing over and over again.

6 You have to understand this is not a game and you're  
7 treating it like a game. And truth is not something -- truth is  
8 what it is. So when the tribe responded to you and you had filed  
9 documents saying that they didn't in good faith you had an  
10 obligation to inform the Court of that and you let the thing go  
11 for weeks and weeks. It was up to Mr. Kiley then, who just  
12 happened to know, to bring this to the Court's attention, which  
13 is really reprehensible.

14 I am not extending this tortured case by even one  
15 day. There is no good cause to extend the discovery period.  
16 Everybody's suffered enough with this case. And after reading  
17 that very long response, very detailed response of some professor  
18 as to why they were unwilling to let you back into the program,  
19 that sheds a lot of light on everything you're saying here, but  
20 that's for another time.

21 But it really was quite enlightening to me as to --  
22 you've been telling a one-sided history of your relationship with  
23 Michigan State in this case. They apparently gave you nine years  
24 to finish your PhD and spent a lot of money on your projects and  
25 ever since then you've been suing them as far as I can tell.

1 All right. So I'm going to -- in summary I'm going  
2 to deny all motions except the motion to enforce the subpoena on  
3 Christianson. A final order will be entered on that, not a  
4 contempt citation, and I'll support that with a little memorandum  
5 as well.

6 All right. Thank you, gentlemen. Court's adjourned.

7 MR. KILEY: Thank you, your Honor.

8 MR. SHIPARSKI: Thank you, your Honor.

9 (At 10:35 a.m., proceedings adjourned)

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## CERTIFICATE

I, Patricia R. Pritchard, CER 3752, Certified Electronic Court Reporter for the State of Michigan, do hereby certify that the foregoing pages, 1 through 25, inclusive, comprise a full, true and correct transcript, to the best of my ability, of the proceedings and testimony recorded in the above-entitled cause.

October 25, 2013

Patricia R. Pritchard /S/  
Patricia R. Pritchard, CER 3752